I am commenting as a programmer who is sometimes forced to work with and interoperate with Microsoft products.

Microsoft has been ruled a monopolist, and ruled guilty of abusing their monopoly power. The purpose of the settlement, as I understand it, is to prevent them from continuing to abuse their monopoly power. This settlement does not accomplish that goal. Instead, if accepted, this settlement will join the litany of agreements meant to restrict Microsoft which they trivially bypassed on their ways to becoming a bigger, more powerful, and more abusive monopoly. Certainly it does not limit Microsoft's ability to abuse monopoly power to achieve the goals it has reached for before.

Allow me to present some of the obvious bypass mechanisms which Microsoft has. This list is not exhaustive, it merely gives an idea of how readily Microsoft can continue its abusive behaviour.

There are provisions intended to allow OEMs to ship machines that dual-boot with other operating systems. Those provisions do not restrict the ability of Microsoft to have its operating systems, upon boot, identify, reformat, and reclaim partions of unknown types. This feature is not dissimilar from "self-healing" features already in Windows. It would also eliminate dual-boots more effectively than current OEM restrictions do. If this agreement intends to make dual-boots possible, then it fails.

There are provisions intended to allow OEMs to customize various aspects of the appearance of the operating system. Yet there is no restriction that would keep Microsoft from saying that it will not sell OEM Windows licenses at all. Instead Microsoft can allow the OEM to ship the machine with a self-installer, and then upon initial boot the user and Microsoft would enter into a shrinkwrap agreement. This would be an obvious tactic for Microsoft to use. Once they have done so they can negotiate prices for the self-installers exactly as they previously did OEM licenses. And they further retain complete control of what users can see on a purchased computer. If this agreement intends to either limit Microsoft's ability to abuse OEMs or control what users see, then it fails.

Section G has an explicit disclaimer for any agreements where Microsoft licenses intellectual property from a third party. But Microsoft does that with virtually every major software component, either through cross-licensing of patents or through specific licensing agreements. It will therefore be hard to find any agreements which section G applies to

that don't fall under the exemption. Section G therefore fails of any
intended regulatory effects.

It does not take a prophet to forsee that Microsoft will attempt to
interpret the exemptions in section J far more generously than the
government or competitors would wish. Even if such interpretations are
outrageous, if Microsoft can make the court case drag on for a period of
years, they can make much of the agreement effectively useless.
Microsoft could, for instance, build authentication into virtually
everything they build as part of .NET, and then apply section J as a
blanket exemption. Blanket loopholes, properly exploited, will allow
Microsoft to make virtually any part of the settlement fail.

I could list many more ways in which Microsoft can circumvent any
intended restrictions. But I think the point is clear. If this
settlement goes into effect, Microsoft will have no trouble bypassing it
while continuing to abuse its monopoly. Given past behaviour, there is
no question that they will. I would find this toothless settlement to
be a sad resolution to this episode in the ongoing saga of Microsoft's
abusive monopoly.

Sincerely,
Ben Tilly